

## **STATE'S MOTION FOR DISCOVERY**

Criminal Rule 15: The defense must provide the State with a list of defenses and witnesses.

The State of Arizona, by and through undersigned counsel, requests that the defendant, pursuant to Rule 15.2(b), Arizona Rules of Criminal Procedure, be required to comply with a list of names and addresses of all witnesses that will testify to each specific defense.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **FACTS:**

On January 16, 1997, approximately 1:33 a.m., officers responded to the area of Route 51 between Colter and Glendale on a report of an injury accident. When they arrived, the officers determined from witness statements that the defendant had met the victim, Richard Borland, at a bar and offered him a ride on his motorcycle. As the defendant's motorcycle was traveling northbound on Route 51, it attempted to move from the slow lane on the far right to a faster lane. While changing lanes, the defendant's motorcycle struck a northbound Nissan being driven in the center lane by Mari Ford. The defendant told witnesses at the scene that he was traveling in the right lane when the car in front of him suddenly stopped and he ran into the back of it.

Officer Flores, the investigating officer, testified at the Grand Jury that there was 140 feet of motorcycle skid prior to contact with the Nissan. In her calculations, that would place the motorcycle's speed approximately 65 mph. The skid marks also showed that the motorcycle was moving from the slower lane into the center lane. Mari Ford, the driver of the Nissan that the defendant's motorcycle hit, stated that she was

traveling in the center lane, paying attention to the road ahead, when the motorcycle struck her from behind. Ms. Ford was not injured in the collision.

Victim Richard Borland died four days after the collision from massive head injuries. The helmet that he had been wearing had come off of his head just after impact. The defendant suffered a fractured right arm, several fractured ribs, and a torn ear. The defendant consented to having his blood drawn; a sample of his blood drawn at 3:00 am showed 0.155% blood alcohol.

The defendant has been charged with manslaughter, a class 2 dangerous felony, and endangerment, a class 6 dangerous felony.

On July 14, 1997, the State received from the defendant a letter giving Notice of Defenses pursuant to Rule 15.2(b), Arizona Rules of Criminal Procedure. In his notice that defendant lists:

All defenses listed in 17 A.R.S., Rules of Criminal Procedure, Rule 15.2(b) and brain injuries, closed head injuries, post concussive syndrome, antigrade and retrograde amnesia, disinhibition and diffuse axonal injuries.

## **LAW**

Rule 15.2(b), Arizona Rules of Criminal Procedure states:

Within 20 days after the arraignment in Superior Court, or, in limited jurisdiction courts, within 10 days of the prosecutor's disclosure pursuant to Rule 15.1(a) or at such other time as the court may direct, the defendant shall provide the prosecutor with a written notice specifying all defenses as to which the defendant will introduce evidence at trial, including, but not limited to, alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. **The notice shall specify for each defense the persons, including the defendant, whom the defendant will call as witnesses at trial in support thereof.** It may be signed by

either the defendant or defendant's counsel, and shall be filed with the court.

[Emphasis added.] The notice that the defendant has filed is inadequate because the defense has given the State no information about what defenses will be raised or what witnesses the defendant intends to call at trial to support those defenses. The defendant's notice states that he may raise "all defenses" listed in Rule 15.2(b), but this is patently untrue. For example, alibi, insanity, self-defense, impotency, and marriage have no conceivable relevance as defenses for manslaughter and endangerment.

Rule 15.2(b) specifically requires the defendant to list his defenses and to specify the persons that the defendant will call as witnesses at trial in support of each defense. As the Arizona Supreme Court has stated, "The Rules of Criminal Procedure facilitate the exchange of information between the State and an accused in order to avoid surprise, delay, and to sharpen and narrow the issues for trial." *State ex rel. Baumert v. Superior Court*, 133 Ariz. 371, 373, 651 P.2d 1196, 1198 (1982). When the defense files a general list of defenses, but does not disclose witnesses who will testify as to those defenses, the notice of defenses in essence is meaningless because it does not allow the State an opportunity to investigate those alleged defenses. The notice of defenses filed in this case fails to comply with Rule 15.2(b).

## **CONCLUSION**

The defense has failed to provide the State with the notice that the defense is required to provide under Rule 15.2(b). Therefore, the State requests this Court to order the defendant to provide the State with a list of specific defenses that will be used at trial

and witnesses who will support each defense, listing an address for each defense witness.